

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)	
)	Criminal No.
v.)	
)	Violation:
ROBERT C. McFARLANE,)	2 U.S.C. § 192.
)	
Defendant.)	
_____)	

I N F O R M A T I O N

The Independent Counsel charges:

COUNT ONE

(September 5, 1985 Letter
to the House Permanent Select
Committee on Intelligence)

1. From October 17, 1983 to December 4, 1985, the defendant ROBERT C. McFARLANE was the Assistant to the President for National Security Affairs (the "National Security Advisor"), in which capacity he was responsible for developing, coordinating and implementing national security policy as approved by the President, as well as staffing and administering the National Security Council (the "NSC"). As the National Security Advisor, the defendant ROBERT C. McFARLANE had offices in the West Wing of the White House, Washington, D.C.

2. At all times relevant to this Information, the NSC was a government entity established by the National Security Act of 1947. The function of the NSC was, among other things, to review, guide and direct foreign intelligence and covert action activities. The staff of the NSC was appointed to perform such duties as might be prescribed by the NSC in the performance of its functions. The staff of the NSC had offices located in the Old Executive Office Building (the "OEOB"), Washington, D.C.

3. At all times relevant to this Information, the Contras were military insurgents engaged in military and paramilitary operations in Nicaragua.

4. From in or about December 1981 to on or about October 12, 1984, the United States Government, acting principally through the CIA, pursuant to written presidential findings, provided the Contras with financial support, arms and military equipment, as well as supervision, instruction, tactical and other advice, coordination, intelligence and direction. During fiscal year 1984, Public Law 98-212 prohibited the CIA, the Department of Defense and any other agency or entity of the United States involved in intelligence activities from obligating or expending more than \$24 million for direct or indirect support of military or paramilitary operations in Nicaragua. These funds were almost entirely obligated by June 1984.

5. On October 12, 1984, Public Law 98-473 was enacted and expressly prohibited the use of funds available to certain agencies and entities of the United States from being obligated or expended in support of military or paramilitary operations in Nicaragua, stating in relevant part:

During fiscal year 1985, no funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual.

This provision of the law was commonly known as the Boland Amendment.

6. Although the Boland Amendment was modified twice, agencies and entities of the United States involved in intelligence activities were at all times between October 12, 1984 and October 17, 1986 prohibited from spending funds available to them (including, without limitation, funds for salaries and transportation) to provide lethal military or paramilitary supplies to the Contras or to participate in the planning or execution of military or paramilitary operations in Nicaragua. At no time during this period was any member of the NSC staff authorized by a presidential finding to undertake any covert or special activities with respect to Nicaragua, including any of the covert or special activities previously undertaken by the CIA. As of October 18, 1986, the provision

by the CIA of military aid to the Contras was resumed pursuant to statutory authorization and appropriation.

7. On August 20, 1985, the Chairman of the House of Representatives Permanent Select Committee on Intelligence ("HPSCI") wrote a letter on behalf of the Committee to the defendant ROBERT C. MCFARLANE in the defendant MCFARLANE's capacity as National Security Advisor. The letter referred to press accounts of alleged activities by the NSC with respect to the Contras and requested, among other things, a full report on the activities of the NSC to support the Contras after the enactment of the Boland Amendment.

8. On September 5, 1985, in the District of Columbia, the defendant ROBERT C. MCFARLANE, having been summoned to give testimony and to produce papers upon a matter under inquiry before the United States House of Representatives, unlawfully, willfully and knowingly did make default by refusing and failing to answer fully and completely, to wit, defendant MCFARLANE signed and caused to be transmitted to HPSCI, a committee of the United States Congress, a letter that stated as follows:

This is in reply to your letter of August 20, 1985 in which you called attention to press reports of ". . . alleged activities by the National Security Council (staff) regarding the contras in Nicaragua . . ." and asked for a full report and legal justification for any such activities. Like you, I take such charges very seriously and consequently have thoroughly examined the facts and all matters which in any remote fashion could bear upon these charges. From that review I can state with deep personal conviction that at no time did I or any

member of the National Security Council staff violate the letter or spirit of the law. . . .

* * *

It is equally important to stress what we did not do. We did not solicit funds or other support for military or paramilitary activities either from Americans or third parties. . . .

9. The underscored statements and representations unlawfully withheld material information from HPSCI because as the defendant ROBERT C. McFARLANE then and there knew and believed, a member of the NSC staff had violated the letter or spirit of the Boland Amendment by, among other things, soliciting support for military and paramilitary activities of the Contras and offering certain advice for the conduct of the Contras' military activities and organization.

(Violation of Title 2, United States Code,
Section 192.)

COUNT TWO

(September 12, 1985 Letter to the House
of Representatives Subcommittee on
Western Hemisphere Affairs of the
Committee on Foreign Affairs)

The Independent Counsel further charges:

10. Paragraphs 1 through 6 of Count One of this Information are repeated, realleged and incorporated by reference herein as if fully set forth in this Count.

11. On August 16, 1985, the Chairman of the House of Representatives Subcommittee on Western Hemisphere Affairs of the Committee on Foreign Affairs wrote a letter on behalf of the Subcommittee to the defendant ROBERT C. McFARLANE in the defendant McFARLANE's capacity as National Security Advisor. The letter referred to "press reports detailing the activities of certain National Security Council staff members in providing advice and fundraising support to Nicaraguan rebel leaders" and requested "all information, including memoranda and any other documents, pertaining to any contact between Lt. Col. North and Nicaraguan rebel leaders as of enactment of the Boland Amendment in October, 1984."

12. On September 12, 1985, in the District of Columbia, the defendant ROBERT C. McFARLANE, having been summoned to give testimony and to produce papers upon a matter under inquiry before the United States House of Representatives, unlawfully, willfully and knowingly did make default by refusing and

failing to answer fully and completely, to wit, defendant McFARLANE signed and caused to be transmitted to the House of Representatives Subcommittee on Western Hemisphere Affairs of the Committee on Foreign Affairs, a subcommittee of the United States Congress, a letter that stated as follows:

This is in reply to your letter of August 16, regarding the activities of members of the NSC staff in connection with the Nicaraguan democratic resistance. Like you, I take these charges very seriously and consequently have thoroughly examined the facts and circumstances which could bear upon these charges in any fashion.

Based on this review, I want to assure you that my actions, and those of my staff, have been in compliance with both the spirit and the letter of the law. . . .

* * *

Throughout, we have scrupulously abided by the spirit and the letter of the law. None of us has solicited funds, facilitated contacts for prospective potential donors, or otherwise organized or coordinated the military or paramilitary efforts of the resistance.

* * *

Mr. Chairman, like you, I am most concerned that at a time when humanitarian assistance is being extended to the UNO there be no misgivings as to the existence of any parallel efforts to provide, directly or indirectly, support for military or paramilitary activities in Nicaragua. There has not been, nor will there be, any such activities by the NSC staff. . . .

13. The underscored statements and representations unlawfully withheld material information from the House of Representatives Subcommittee on Western Hemisphere Affairs of the Committee on Foreign Affairs because as the defendant McFARLANE then and there knew or had reason to believe, a

member of the NSC staff had violated the spirit and letter of the Boland Amendment by, among other things, providing, directly or indirectly, support for military and paramilitary activities in Nicaragua.

(Violation of Title 2, United States Code,
Section 192.)

COUNT THREE

(October 7, 1985 Letter
to the House Permanent Select
Committee on Intelligence)

The Independent Counsel further charges:

14. Paragraphs 1 through 8 of Count One of this Information are repeated, realleged and incorporated by reference herein as if fully set forth in this Count.

15. On September 12, 1985, having received the letter referred to in Count One of this Information and having met with the defendant ROBERT C. McFARLANE, the Chairman of HPSCI wrote a letter, on behalf of the Committee, to the defendant McFARLANE, enclosing a series of questions "concerning allegations about the activities of Lieutenant Colonel Oliver North."

16. On October 7, 1985, in the District of Columbia, the defendant ROBERT C. McFARLANE, having been summoned to give testimony and to produce papers upon a matter under inquiry before the United States House of Representatives, unlawfully, willfully and knowingly did make default by refusing and failing to answer fully and completely, to wit, defendant McFARLANE signed and caused to be transmitted to the House Permanent Select Committee on Intelligence, a committee of the United States Congress, a letter that stated as follows:

Q -- When the CIA had to withdraw from their day-to-day contact with the rebels, it has been alleged in the New York Times (8 Aug 85) that Colonel North tried to fill the void, partly through

helping facilitate the supplying of logistics help. Did Colonel North, in his capacity as a staff member of the National Security Council, use his influence to facilitate the movement of supplies, either raised privately in this country or otherwise, to the contras?

A -- Lieutenant Colonel North did not use his influence to facilitate the movement of supplies to the resistance.

* * *

Q -- General Singlaub has stated (Washington Post, 9 Aug 85) that he would often talk to Colonel North and inform him what he was doing and then state that if it was a dumb idea, for North to send him a signal. Is that your impression of the relationship between General Singlaub and Colonel North?

A -- There is no official or unofficial relationship with any member of the NSC staff regarding fund raising for the Nicaraguan democratic opposition. This includes the alleged relationship with General Singlaub.

* * *

Q -- The Nicaraguan freedom fighters, in the last two months, are reported by the U.S. Embassy, Tegucigalpa, to have received a large influx of funds and equipment with some estimates of their value reaching as high as \$10 million or more. Do you know where they have obtained this assistance?

A -- No.

17. The underscored answers unlawfully withheld material information from HPSCI because, among other things, the defendant McFARLANE then and there, (a) knew and believed that Lieutenant Colonel North had used his influence to facilitate the movement of certain supplies to the Contras; (b) knew or had reason to believe that a member of the NSC staff had had contact with retired Major General John K. Singlaub regarding

fund raising for the Contras; and (c) knew and believed that the Contras had received millions of dollars from a third country.

(Violation of Title 2, United States Code,
Section 192.)

COUNT FOUR

(December 8, 1986 Testimony
before the House of Representatives
Committee on Foreign Affairs)

The Independent Counsel further charges:

18. Paragraphs 1 through 6 of Count One of this Information are repeated, realleged and incorporated by reference herein as if fully set forth in this Count.

19. On December 8, 1986, in the District of Columbia, the defendant ROBERT C. MCFARLANE, having been summoned to give testimony before the United States House of Representatives Committee on Foreign Affairs, unlawfully, willfully and knowingly did make default by refusing and failing to answer fully and completely, to wit, defendant MCFARLANE withheld material information from the House of Representatives Committee on Foreign Affairs, a committee of Congress, as follows:

Q -- There have also been press reports that the [nationals of a third country] have been indirectly involved in financing the contras. Are you aware of any such activities?

A -- I have seen the reports and I have heard that the [nationals of such third country] have contributed. The concrete character of that is beyond my ken.

20. The underscored answer unlawfully withheld material information from the United States House of Representatives Committee on Foreign Affairs because as the defendant MCFARLANE then and there knew and believed, the defendant MCFARLANE had

been aware since 1984 that nationals of the third country referred to had expressed willingness to contribute millions of dollars to the Contras, the defendant McFARLANE had provided a representative of that third country with the number of a Contra-controlled bank account into which the funds could be deposited, and the defendant McFARLANE was aware that nationals of that third country had in fact made contributions to the Contras totalling millions of dollars.

(Violation of Title 2, United States Code,
Section 192.)

A handwritten signature in dark ink, appearing to read "Lawrence E. Walsh", written over a horizontal line.

LAWRENCE E. WALSH
Independent Counsel